



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/169868

PRELIMINARY RECITALS

Pursuant to a petition filed November 4, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Family Care, a Medical Assistance (MA)-related benefit, a hearing was held on November 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency incorrectly determined the petitioner's FC cost share for November 2015 forward.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] IM Spec. Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to November 2015, the petitioner participated in FC with a cost share of \$252.03. Her case underwent a periodic review on September 30, 2015. On October 14, 2015, the Department

mailed her a notice advising that she would have to pay a \$274.92 monthly FC cost share from November 1, 2015, forward. *See*, Exhibit 11.

3. Prior to the June 2015 cost share calculation, the Department was budgeting gross income of \$1,228.00 for the petitioner. The agency also subtracted the \$913 Basic Needs Allowance and a \$62.87 Medical/Remedial Expense from that income monthly.
4. The petitioner receives undisputed monthly gross income of \$1,228.00 (Social Security). She pays rent of \$305, a utility expense of \$29.82 (phone), and documented medical/remedial expenses of \$40.08 monthly. Due to the low rent and utility expenses, the agency continued to subtracted the \$913 Basic Needs Allowance, but no Special Needs Allowance, from her income in the cost share calculation. The only significant difference between the petitioner's cost share calculations before and after November 1, 2015, was the decreased medical/remedial expense.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statutes, § 46.286, and described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. *See also*, *Medicaid Eligibility Handbook* at §38.2 *et seq.*, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the petitioner has been found eligible for FC. An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." Wis. Admin. Code § DHS 10.34(3)(b). A recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

A person who receives both a Medical Assistance card and Family Care, and is not on "regular MA" because of excess income, is classified as being in Group A, Group B, or Group "B Plus" (not relevant here). Group **A** is for person who receives SSI or certain other benefits that are not relevant here. The petitioner does not fit within Group A. Group **B** status is available to a person who has gross income below the Community Waivers MA income limit of \$2,199 in 2015. *MEH*, § 39.4.1. A Group B recipient may have health insurance premiums, a \$913 Basic Needs Allowance, a Special Housing Amount for excessive housing expenses, and certain medical/remedial expenses subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code §DHS 103.07(1)(d). The petitioner's gross income of \$1,228 places her in Group B.

For November 2015, the agency's cost share computation looked like this:

Gross income	\$1228.00
-Basic Needs Allowance	- 913.00
-Special Housing Amount	- 000.00
-Health Insurance Premium	- 000.00
-Med/remedial expenses	- <u>40.08</u>
Cost share	\$ 274.92

The \$913 Basic Needs Allowance was subtracted. There is no dispute that the petitioner's rent was \$305. The Special Housing Amount, if applicable, is calculated by starting with a \$305 rent cost, plus the \$29.82 telephone utility, for total allowable housing expenses of \$334.82. From the \$334.82, a \$350 shelter cost threshold is subtracted, leaving zero to be subtracted as a deduction for higher housing expenses. The agency also correctly subtracted \$40.08 in medical/remedial expenses. Thus, the cost share was correctly calculated from November 2015 onward. *See*, *MEH*, § 28.8.3.1.

The petitioner complained that the cost share calculation does not take into consideration her need to pay down debt or tithe 10% to a religious organization. Debt repayment cannot be specifically considered because it is not an allowable deduction per state code. *See*, Wis. Stat. § 46.286(2), Wis. Admin. Code § DHS 10.34(3)(b). Apparently, the expectation is that essential needs can be met through the \$913 Basic Needs Allowance deduction. Further, there is no deduction for charitable donations, as such donations are an optional expenditure. Decisions from this office have repeatedly held that persons receiving public assistance do not get to increase their support from the taxpayers by giving money away.

CONCLUSIONS OF LAW

1. The petitioner's FC cost share for November 2015 to the present was correctly determined.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of December, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 30, 2015.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability